

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MONTGOMERY COUNTY,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	No. 97-6331
	:	
MICROVOTE CORPORATION,	:	
CARSON MANUFACTURING COMPANY, INC.,	:	
and WESTCHESTER FIRE INSURANCE	:	
COMPANY,	:	
	:	
Defendants.	:	
	:	

MEMORANDUM

R.F. KELLY, J.

MAY 9, 2000

Presently before the Court is the Second Motion by Defendant, Microvote Corporation ("Microvote"), for Leave to Amend its Answer Pursuant to Federal Rule of Civil Procedure 15(a), the Response to that Motion by Plaintiff, Montgomery County ("the County"), Microvote's Reply to the County's Response and the County's Sur-Reply in letter form to Microvote's Reply. Microvote seeks leave of this Court to add the following, which it has labeled an affirmative defense: "MicroVote again raises the affirmative defense of compliance with the terms of contract between MicroVote and Montgomery County in that MicroVote Voting machines 'complied with FEC [Federal Election Commission] Standards for reliability, availability, maintainability and repair testing on hardware' under the Warranties Section of the May 1993 Contract." (Microvote's Second Mot. for Leave to Amend

Ans., Ex. A at 7, ¶ 15.) The applicability of the FEC Standards has been contested since the inception of this litigation.

Federal Rule of Civil Procedure 15(a) allows a party to amend its answer after it has already been filed. FED. R. CIV. P. 15(a). The County contends, and an examination of Federal Rule 8(c) reveals, that Microvote's proposed amendment is not a recognized affirmative defense. FED. R. CIV. P. 8(c). Microvote argues, in its Reply, that its Motion is governed by the language in Federal Rule 8(c) that "[i]n pleading to a preceding pleading, a party shall set forth affirmatively . . . any other matter constituting an avoidance or affirmative defense." Id. Thus, Microvote contends it should be permitted to amend its Amended Answer to include the defense of the applicability of the FEC standards to the contract between the County and Microvote.

The County's opposition to Microvote's Motion states that the asserted defense would prejudice the County, but it does not set forth how the County would be prejudiced. This Court agrees with Microvote that "[i]t is difficult to see how any prejudice could enure to the Plaintiff's [sic] when they have been well aware of the FEC Standards since early on . . . and when considering the numerous depositions, briefs, and arguments previously made and set forth . . . concerning the FEC standards." (Microvote's Reply to County's Resp. at 3.) Despite

this Court's agreement with Microvote's statement, Microvote's defense does not set forth "any other matter constituting an avoidance or affirmative defense" as stated in Federal Rule 8(c). Consequently, Microvote's Motion must be denied. This holding does not, however, bar the Defendants from claiming that they have complied with the FEC Standards, since this allegation has been an integral part of this case from its inception.

An appropriate Order follows.

MONTGOMERY COUNTY,

Plaintiff,

v.

MICROVOTE CORPORATION,  
CARSON MANUFACTURING COMPANY, INC.,  
and WESTCHESTER FIRE INSURANCE  
COMPANY,

Defendants.

CIVIL ACTION

No. 97-6331

AND NOW, this 9th day of May, 2000, upon consideration of the Second Motion by Defendant, Microvote Corporation, for Leave to Amend its Answer, and all Responses and Replies thereto, it is hereby ORDERED that Defendant's Motion is DENIED.

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Robert F. Kelly, J.